

EXHIBIT 5

DATE 2-18-09

HB 483 / 566

February 18, 2009

TO: Representative Art Noonan, Chair,
Federal Relations, Energy, and Telecommunications Committee, and
members: Representatives Driscoll, Klock, Augare, Boland, Jones, Jopek,
MacLaren, O'Hara, Phillips, Regier, Reichner, Stahl, and Wiseman

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Ronald M. Mathsen

I want to address public participation in permitting process for major industrial facilities. But first I want to point out that many statements have been made by proponents of these bills that restrict public participation in permitting processes. These statements have laid blame on the public for the demise of the Highwood Generating Station. But I submit that these accusations have missed the mark. There are several reasons that HGS, as conceived, failed. These include bad vision, bad planning, and a bad economic situation.

The bad vision came in thinking that constructing a coal-fired electricity generation plant at a time when it was clear to many of us that the use of coal in conventional processes was neither environmentally safe nor economically feasible given global warming and the likelihood of carbon regulations.

The planning was bad because SME, the HGS proposer, chose to locate the HGS 360 miles from the source of the coal and in an area of prime agricultural land, where some of the nearest neighbors were organic farmers, as well as on a national historic landmark site. These questionable decisions together with the rapidly escalating cost of materials and the national feeling that coal-fired generation of electricity should not be used in a time of global climate warming all led to a situation in which financing of the HGS was difficult at first and nearly impossible in the end. The economic downturn finally killed the plant.

The proposers of these bills that seek to limit public input into permitting of major industrial plants need to be reminded that the Constitution of the State of Montana, in Section 3, Inalienable Right, the constitution reads "All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties" Likewise, in Section 8, Right of Participation, we find "The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law."

The inalienable right we were trying to protect was our right to "a clean and healthful environment" as given in Section 3. In doing that we were using our right of participation to make agencies aware of our right to a clean and healthful environment.

There are no rights in the constitution that would guarantee a company the right to economic investment in a project when that project endangers our right to a clean and healthful environment. The proposed bills in question, in addition, would limits severely the public's "right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law." Changing this right would go against the intent of the authors of the constitution. It would severely limit the effectiveness of the Environmental Impact Statement since it is often, in fact most often, that concerns relating to the safety of a project for our environment come out in the public testimony at a hearing on the project in question.

These bills give too much weight to the concerns of the industry and leave too little for the public's ability to protect its constitutional rights. Most industries do not voluntarily do what is best for the environment. But most will follow a course of protecting and preserving the

environment if strong, enforceable regulations are imposed and are enforced by the state agencies charged with the enforcement.

Over the years since 1972 when the Constitution of the State of Montana was adopted by the constitutional convention and ratified by the people of Montana, there have been many actions by the legislature weakening the regulations regarding enforcement of laws like the Clean Air Act. All these weakening of regulations lessen the public's ability to protect its right to a clean and healthful environment. Since a prime job of legislators is to defend and protect the constitution, it seems to me that passing any of these bill does not do what you have sworn to do in taking your oath.

HB 483: Rep. Llew Jones (R-Conrad). This bill would essentially make it impossible for citizens to appeal air pollution, water pollution, and major facility siting act permits approved by the Department of Environmental Quality.

HB 529: Rep. Llew Jones (R-Conrad). This bill would weaken the State's ability to analyze environmental impacts from energy development on State lands.

HB 566: Rep. Llew Jones (R-Conrad). This bill would require that no matter how poor an environmental analysis a State agency prepares to comply with the Montana Environmental Policy Act, the only recourse for any court if the permitting decision is successfully challenged is to send the decision back to the agency. During the challenge the permit or license cannot be enjoined, revoked, modified, or suspended, regardless of the errors or omissions in the MEPA analysis. The bill also would change the purpose of MEPA to informing the legislature instead of informing the public and decision-makers.

These bills, and comparable ones in the Montana Senate, endanger the residents of Montana of being deprived of their constitutional guarantee of a clean and healthful environment. In addition, they would restrict the public from meaningful participation on the regulatory process. The public is and must continue to be the watchdog in seeing that the constitution is followed and that the regulatory agencies do their job in safeguarding our environment for the enjoyment of all of us and our posterity.

From The Constitution –

Section 3. Inalienable rights. All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.

Section 8. Right of participation. The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law."